

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE H.N. NARAYAN

CIVIL REVISION PETITION NO.755 OF 1998

C/W

CIVIL REVISION PETITION NO.1032 OF 1998

Between

Smt.Anusha, W/o Shri K.Shankar Raman,
aged about 37 years, residing at
No.B.176, New H.I.G. Colony,
Annanagar, Madurai - 625 020,
Tamil Nadu.

..Petitioner
(Common in both)

(By Sri M.Papanna, Adv.)

And

Shri K.Shankar Raman, s/o
Shri K.S.Krishnan, aged about
40 years, Officer-Sales, Automobile
Corporation of Goa Limited, C/o
Satish Motors Ltd., Bombay - Jalna
Road, Aurangabad-2.

..Respondent
(Common in both)

(By Sri Shyam Koundinya, P.S.Adv.)

These revisions are filed under Section 115
CPC against the orders dt.21.1.1998 and 28.1.1998
respectively passed in M.C.No.390 of 1998 on the
file of the Addl.Prj.Judge, Family Court,
Bangalore, partly allowing the application filed
under Section 24 of the Hindu Marriage Act and

ordering that Rs.400/- is fixed to the respondent as travelling expenses and Rs.200/- is fixed as incidental charges, per day of stay.

These petitions having been reserved, the Court made the following:

O R D E R

These revisions arise out of the interlocutory orders of the Family Court, Bangalore. In view of the preliminary objections raised by the learned counsel for the respondent, the short question that arises for consideration in these revisions is whether a revision lies to this Court under Section 115 CPC against the interlocutory orders passed by the Family Court.

2. The Family Courts in the State of Karnataka were established by Government of Karnataka after consultation with the High Court of Karnataka for the purpose of deciding cases filed within the jurisdiction of the Family Court. The Law Commission in its 59th report (1974) had also stressed in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the

commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the courts in adopting ~~the~~ conciliatory procedure and the courts continue to deal with family disputes ~~therefore~~, in the same manner as other civil matters and therefore the Government thought it fit to introduce this Statute which seeks to provide the jurisdiction to the Family Courts in the matters relating to:

- (i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (ii) the property of the spouses or of either of them;
- (iii) declaration as to the legitimacy of any person;
- (iv) guardianship of a person or the custody of any minor;
- (v) maintenance, including proceedings under

Chapter IX of the Code of Criminal Procedure etc. etc. and provide for only one right of appeal which shall lie to the High Court.

3. Section 8 provides for exclusive jurisdiction of the Family Court even in case of pending proceedings. S.19 was ^{amended} introduced by Act of 59 of 1991. A revision under Section 116 is provided under Section 19(4) for the purpose of examining the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Civil Procedure for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding. Section 19(1) specifically provides an appeal from every judgment or order not being an interlocutory order, of a Family Court to the High Court both on facts and on law. Section 19(5) specifically bars an appeal or revision against the order or decree of the Family revision against the order or decree of the Family

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Court except as provided under Sections 19(1)(2)(3) and (4).

..... (emphasis supplied by me)

4. Therefore, careful perusal of this provision of appeals and revisions as provided under Chapter V of the Family Courts Act, 1984, go to show that a revision is expressly excluded against interlocutory orders of the Family Court. Learned counsel for the petitioner has relied upon the order of a Division Bench of this Court Crl.A.No.126 of 1984 dt.9.11.1994. An unsuccessful party preferred a criminal appeal before this Court against the order of the Family Court, Belgaum, in Crl.Misc. No.1271 of 1993. The Division Bench has directed the office to register the said criminal appeal as a Civil Revision Petition which will have to be disposed of by a learned Single Judge under the provisions of the Karnataka High Courts Act, 1961, and to place the matter before the Hon'ble Chief Justice for necessary orders.

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5. In that case, the criminal Division Bench was not ~~seized~~^{seized} of the question whether ~~any~~^a revision under Section 115 CPC lies to this Court against the interlocutory orders of the Family Court. The Division Bench has also not ~~disposed~~^{dealt with} this question at all. Therefore, in my opinion, the said judgment has not stated anything regarding the maintainability of the revision.

5. In another matter, a revision was filed by one of the aggrieved person against the interlocutory order of the Family Court, Bangalore. But the office raised an objection regarding the maintainability of the civil revision petition and the matter was placed before the revision Court for orders. His Lordship Justice J.Eswara Prasad (as he then was) has observed as follows:

"It is clear that under Section 19(1) of the Family Courts Act, revision is not maintainable. The party, if so advised, may file a writ petition against the order of the Family Court. Office note upheld and the revision dismissed."

(CRP FR 827 of 1994: D.D. 22.7.1994).

6. The scope of Section 19(1) and (4) of the Family Courts Act, 1984 came up for consideration before a Division Bench of this Court in T.V. SATYANARAYANA VS. SUBBA ARUNA MEENAKSHI (ILR 1988 (2) Karnataka, 1074). The question arising for consideration before the Division Bench was - whether an appeal lies against an order made by the Family Court on an application presented under Section 24 of the Hindu Marriage Act granting interim maintenance under Section 19 of the Family Courts Act? It is held therein as follows:

"As can be seen from Section 19, an appeal lies to the High Court against every judgment or order made by the Family Court provided it is not an interlocutory order. Sub-section (4) further provides that no appeal or revision shall lie to any Court from any judgment or order or decree of a Family Court. If sub-section (4) had not been there, a revision petition under Section 115 would have been maintainable. But in view of sub-section (4) even a revision petition

cannot be entertained by this Court against an interlocutory order made by the Family Court."

It is further held therein as follows:

"An interlocutory order made under Section 24 of the Hindu Marriage Act certainly amounts to a 'Judgment' the very fact that it is an interlocutory order makes it non-appealable in view of the express words of Section 19(1) of the Family Courts Act...In view of sub-section (4) of Section 19 of the Family Courts Act, the appeal cannot even be permitted to be converted into a revision petition as in view of sub-section (4) of Section 19 of the Act, no appeal or revision except to the extent provided under sub-section (1) of Section 19 of Family Courts Act lies to this Court."

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7. An amendment to Section 19 by Act of 59 of 1991 has not improved the matter any better. Therefore, the decision of the Division Bench still holds good as a binding precedent.

8. This question crops up again though not directly before a Division Bench of this Court in SHASHI SHARMA @ SEEMA VS. PRAVEEN SHARMA AND ANOTHER (ILR 1997 Kar.609). An interlocutory order of the Family Court, Bangalore was challenged in a writ petition before the learned Single Judge who modified the order of the Family Court against which a writ appeal was preferred. The Division Bench in the said case has made the following ruling:

"A perusal of the relevant provisions of the Act, unambiguously leads to the conclusion that no provision has been made for filing of an appeal or revision against an interlocutory order passed by the Family Court. In the absence of a provision to the contrary, no party acquires a right to approach the higher Court by way of appeal or revision. The appeals

under the Act are maintainable only against the final orders. It is settled position of law that an appeal is a statutory right which may not be conferred upon a party unless special provision is made under law for filing of such an appeal."

Commenting upon the remedy sought under Article 226 of the Constitution, it is further held as follows:

"The remedy under Article 226 of the Constitution cannot be permitted to be availed of for the purposes of frustrating the welfare legislation or allowed to be an appeal in disguise. The Article is not intended to circumvent the statutory procedure. Where the petitioner is shown to have remedy of challenging the final order by way of appeal, the High Court would normally not exercise its jurisdiction under Article 226 of the Constitution."

It is further held that:

"If the High Court decides to interfere with the interim orders passed by the Family Courts, the same is likely to frustrate the provisions of the Act which are intended to achieve a social object as is evident from the statement of object and reasons and the various provisions noticed herein above. No Writ Petition is therefore maintainable against the interim orders passed by the Family Court unless the same is shown to be in violation of the conditions noted herein above."

...(emphasis supplied by me).

9. Therefore, it is clear that a person aggrieved of an interlocutory order of the Family Court has no remedy except a writ petition as *and also in Shashi Shamma's case,* ~~stated above,~~ ~~as~~ A revision is expressly prohibited by the Act. Therefore, I hold ~~that~~ that revisions

are not maintainable. They are accordingly
dismissed.

Sd/-
JUDGE

Ksj/-